

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT
(PCT Article 36 and Rule 70)

Applicant's or agent's file reference H100125PC	FOR FURTHER ACTION	See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)
International application No. PCT/EP 03/06550	International filing date (<i>day/month/year</i>) 20.06.2003	Priority date (<i>day/month/year</i>) 20.06.2002
International Patent Classification (IPC) or both national classification and IPC F01L13/00		
Applicant FLIERL, Rudolf et al.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 6 sheets, including this cover sheet.
- This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).
- These annexes consist of a total of 5 sheets.
3. This report contains indications relating to the following items:
- I Basis of the opinion
 - II Priority
 - III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV Lack of unity of invention
 - V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI Certain documents cited
 - VII Certain defects in the international application
 - VIII Certain observations on the international application

Date of submission of the demand 04.12.2003	Date of completion of this report 01.09.2004
Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Mallo Lopez, M Telephone No. +49 89 2399-2958



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International application No. PCT/EP 03/06550

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-15 as originally filed

Claims, Numbers

1-27 received on 19.08.2004 with letter of 19.08.2004

Drawings, Sheets

1/6-6/6 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- the language of publication of the international application (under Rule 48.3(b)).
- the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- contained in the international application in written form.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority in written form.
- furnished subsequently to this Authority in computer readable form.
- The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- the description, pages:
- the claims, Nos.:
- the drawings, sheets:

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5. This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).
(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)
6. Additional observations, if necessary:

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:
- the entire international application,
- claims Nos. 19
because:
 the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):
 the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 19 are so unclear that no meaningful opinion could be formed (specify):
see separate sheet
- the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- no international search report has been established for the said claims Nos.
2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:
- the written form has not been furnished or does not comply with the Standard.
- the computer readable form has not been furnished or does not comply with the Standard.

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-18, 20-27
	No: Claims	
Inventive step (IS)	Yes: Claims	1-18, 20-27
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-18, 20-27
	No: Claims	

2. Citations and explanations

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see separate sheet

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ITEM III

1. The application contains two independent claims in the same category (claims 1 and 19). Since, in the present case, it is considered appropriate to cover the subject-matter in a single independent claim, the application contains an unnecessary number of independent claims. The claims, therefore, lack conciseness. Moreover, lack of clarity of the claims as a whole arises, since the plurality of independent claims makes it difficult, if not impossible, to determine the matter for which protection is sought, and places an undue burden on others seeking to establish the extent of the protection.

Hence, the claims do not meet the requirements of Article 6 PCT.

No opinion will be established with respect to independent claim 19 in accordance with the request of the applicant in his letter of 10.08.2004.

ITEM V

1. This opinion is established assuming that the claimed priority date is valid, therefore, documents US 2002/0162522 A and DE 10 100 173 A have not been taken into account.
2. US 4 397 270 A, which is regarded as being the closest prior art, discloses a device for adjusting the valve lift of valves of a combustion engine according to the preamble of claim 1 and a method according to the preamble of claim 20.

The features of the characterizing part of claims 1 and 20 are neither known from, nor rendered obvious by this document.

The subject-matter of claims 1 and 20 would therefore appear to meet the requirements of Articles 33(2), 33(3) and 33(4) PCT.

3. Claims 2 to 18 and 21-27 represent dependent claims as permitted under Rule 6.4 PCT and as such also meet the requirements of the PCT with respect to novelty and inventive step.
4. Further remarks.

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4.1 Claim 1 is directed to "a device for adjusting the valve lift of valves of a combustion engine". From this wording of claim 1 it is clear that the valves themselves and the engine are not comprised in the claimed device. However, claims 3, 5 and 11 not only defines the device itself (for instance defining that the bearing is attachable to or is adapted to be a part of the engine) but also specifies its relationship to the engine and valves (e.g."the bearing is attached to or is a part of the engine"; "the bearing is a part of the valve engaging means", etc.) which are not part of the claimed device. The general scope of these claims is, therefore, not clear (Article 6 PCT) because these claims seek to define the claimed device by reference to features of its use, see PCT Guidelines, III-4.8a.

4.2 The references of claims 7, 9-17 and 21-27 to other claims is clearly wrong. In particular it should be taken into account that dependent claims 26 and 27 refer to "the pivot of the rocker lever" and to "the bearing (5)" respectively, while such a pivot of the rocker lever and such a bearing have not been defined in the independent claim 20.

4.3 A positioning means and a cam shaft have already been defined in independent claim 1. The further definition of these elements by the indefinite article in claims 8 and 12 makes unclear whether the elements defined in these claims are the same or not as those defined in claim 1 (Article 6 PCT).

Since a contour of the positioning means, two rollers and two levers have not been previously defined, these elements should be preceded by the indefinite article in the corresponding claims 15 and 22 (Article 6 PCT).

- 4.4 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the document US 4 397 270 A is not mentioned in the description, nor is this document identified therein.
- 4.5 The description is not in conformity with the claims as required by Rule 5.1(a)(iii) PCT.